

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION R5-2017-00XX

RESCINDING ACL ORDER R5-2016-0008 AND
DIRECTING THE PROSECUTION TEAM TO CALENDAR SAME FOR REHEARING

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds that:

1. On February 18, 2016, the Central Valley Water Board issued Administrative Civil Liability Order (ACL Order) No. R5-2016-0008 against Morning Star Packing Company, L.P. (Morning Star) in the amount of one million five hundred thousand dollars (\$1,500,000) for violations stemming from the alleged unauthorized expansion of Morning Star's settling pond and cooling pond and unauthorized reduction of the land application area, all at its tomato processing facility.
2. On March 18, 2016, Morning Star filed a Petition for Review with the State Water Board challenging the ACL Order.
3. That Petition for Review was deemed dismissed by the State Water Board by operation of law after 90 days.
4. On July 15, 2016, Morning Star filed in Colusa County Superior Court a Verified Petition for Administrative Writ of Mandate and Declaratory Relief or Other Appropriate Relief against the Boards, identified as *The Morning Star Packing Company, L.P. v. State Water Resources Control Board, et al.*, Case No. CV24162 (Writ Petition), in which Morning Star sought a writ of mandate vacating ACL Order No. R5-2016-0008.
5. Allegations contained in Morning Star's Writ Petition alerted the Central Valley Water Board to (1) certain documents that had been within the Board's files that were relevant to the ACL hearing but were not included as part of the administrative record, and (2) discrepancies between those documents and statements made by the Prosecution Team during the ACL hearing.
6. The Central Valley Water Board strives to ensure that all of its decisions, including ACL Orders, are reached in a procedurally fair and equitable manner and are fully supported by a complete administrative record.
7. The Central Valley Water Board and Morning Star have entered into a stipulation (Stipulation) to disposing of the Writ Petition. The terms of the Stipulation provide that Morning Star will voluntarily dismiss its Writ Petition with prejudice if the Central Valley Water Board rescinds ACL Order R5-2016-0008. The Stipulation further provides that the Central Valley Water Board may then elect to rehear the matter at a later Board meeting, take other appropriate action in its discretion, or take no further action.

THEREFORE BE IT RESOLVED, the Central Valley Water Board, after considering the entire record, including written and oral testimony at the hearing, hereby:

1. Rescinds ACL Order No. R5-2016-0008.
2. Directs the Prosecution Team to prepare and issue a Hearing Notice and Hearing Procedure for the Central Valley Water Board to rehear ACL Order R5-2016-0008 at a future Board meeting. At such rehearing, the Central Valley Water Board will reconsider the arguments, evidence, and testimony presented at the February 18, 2016, hearing; the documents attached hereto as **Exhibit A**; and any additional arguments, evidence, and testimony as allowed by the Hearing Notice and Hearing Procedure.

I, PAMELA CREEDON, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on 23/24 February 2017.

PAMELA C. CREEDON, Executive Officer